

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 6, 2012

**Elisabeth A. Shumaker
Clerk of Court**

In re:

DWAYNE WILSON,

Petitioner.

Nos. 12-1439 & 12-1452
(D.C. Nos. 1:08-CV-01818-RPM &
1:03-CR-00036-RPM-10)
(D. Colo.)

ORDER

Before **LUCERO, EBEL**, and **HARTZ**, Circuit Judges.

Dwayne Wilson, a federal prisoner appearing pro se, has filed a petition for writ of mandamus, designated No. 12-1439, and a motion for leave to proceed without prepayment of costs or fees. He seeks an order from this court: (1) directing the district court to redocket, consider, and decide his March 2008 motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255, and (2) releasing him from prison on his own recognizance under 18 U.S.C. § 3143.

The district court's criminal docket sheet reflects an entry for a § 2255 motion filed on August 25, 2008. *See* D.C. No. 1:03-cr-00036-RPM-10, Doc. 1195, at 1. But the linked document is a letter from Mr. Wilson inquiring about the status of a § 2255 motion he said that he had filed in March 2008. The attachment to his letter is a lengthy § 2255 motion addressed to the district court and dated March 29, 2008, by Mr. Wilson at the bottom of the first page. *Id.* at 2-17. The district court's

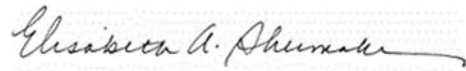
file-stamp on the attached § 2255 motion is August 25, 2008, not March 2008. The district court also initiated a civil docket sheet reflecting the filing of a § 2255 motion on August 25, 2008, but no document is linked to the sole entry on it.

See D.C. No. 1:08-cv-01818-RPM, Doc. 1. In fact, the civil docket sheet shows that the proceeding was terminated on August 27, 2010, but there is no corresponding entry on either the civil or the criminal docket sheet to explain why the § 2255 proceeding was deemed terminated.

Mr. Wilson has previously attempted to find out why his § 2255 motion has not been decided. On October 13, 2010, he filed a motion styled “ExParte Motion to Redocket Misplaced or Loss 2255 Motion from District Court File,” which was docketed in his criminal case as a motion to reconsider. D.C. No. 1:03-cr-00036-RPM-10, Doc. 1254. No action on that motion is shown on the criminal docket sheet, and no entry was made on the civil docket sheet. On October 1, 2012, Mr. Wilson filed a motion related to Doc. 1254, styled “ExParte Motion to Redocket 2255 Motion Pursuant to Doctrine of Equitable Tolling.” *Id.*, Doc. 1280. No action on that motion is shown on the criminal docket sheet, either, and no entry was made on the civil docket sheet. On October 12, 2012, Mr. Wilson filed an amended § 2255 motion, setting out his arguments and again complaining that his March 2008 § 2255 application had never been docketed and the district court had never responded to his other filings related to it. Once again, this filing was docketed in Mr. Wilson’s criminal case. D.C. No. 1:03-cr-00036-RPM-10, Doc. 1282.

Within twenty-one days of the date of this order, the district court is invited to respond to Mr. Wilson's petition for writ of mandamus, to the extent that it seeks docketing, consideration of, and a decision on his § 2255 application. Mr. Wilson's motion for leave to proceed on appeal in No. 12-1439 without prepayment of costs or fees is granted. His request for release on his own recognizance is frivolous and is denied. Upon review, No. 12-1452 is a duplicate filing that was opened in error, and it is closed administratively.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink on a light blue grid background.

ELISABETH A. SHUMAKER, Clerk